



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,249	07/31/2003	Kenneth J. Ouimet	2297-050CON	4787

7590 06/16/2006

Meschkow & Gresham, PLC  
Suite 409  
5727 N. 7th Street  
Phoenix, AZ 85014

EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
----------	--------------

3639

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/633,249	Applicant(s) OUIMET, KENNETH J.	
	Examiner Igor Borissov	Art Unit 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

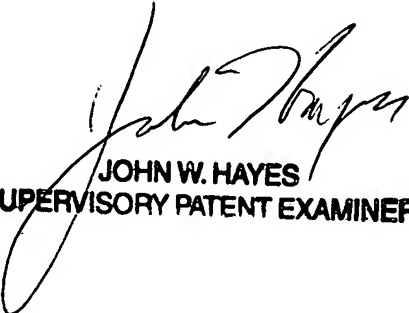
In view of the Appeal Brief filed on 3/31/2006 PROSECUTION IS HEREBY REOPENED, as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
**JOHN W. HAYES**  
**SUPERVISORY PATENT EXAMINER**

### **Double Patenting**

Claims 1-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,988,076 for computer program residing in memory and executable by a processor for control optimization of an enterprise planning model that models an enterprise, because the patented claims are an obvious variation to the present application claims including a computer program residing in memory and executable by a processor for enabling visualization of an effect of a strategic constraint on a primary goal of an enterprise, and as being unpatentable over claims 1-17 of U.S. Patent 7,020,617 for a computer program residing in memory and executable by a processor for characterizing relationships between a primary goal and an auxiliary goal to optimizing a primary objective function to yield one of a plurality of sets of operational decisions.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application contains obvious variant recitations which are obvious variations of the patented invention features since both comparisons perform the same function, in the same way with the same result.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 3-7 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling.

Claim 1 includes a following paragraph: "selecting said primary goal of said enterprise planning model, said primary goal being represented by a primary objective function, said primary objective function depending upon a set of operational variables",

Art Unit: 3639

which appears to miss certain method steps which are critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

For example, the following phrase: "said primary objective function depending upon a set of operational variables" indicates the use of said *set of operational variables*. However, there is no indication in the claim where said *set of operational variables* came from. Said variables are neither provided, established, determined, specified in any form, nor their values or range is somehow designated.

Furthermore, the phrase "said primary goal being represented by a primary objective function" does not recite a method step, but indicates the intended use of said *primary goal*. Therefore, the step of *representing of said primary goal by said primary objective function* is missing, while is critical for the practice of the invention.

Furthermore, the use of the word *selecting* in the phrase "*selecting* said primary goal of said enterprise planning model" indicates that a *plurality* of primary goals of said enterprise planning model has to be established first, in order to support the "*selecting*" step.

Claim 1 further includes a following limitation: "representing said *strategic constraint* by a constraint function, said constraint function depending upon a subset of said operational variables". However, said *strategic constraint*, which is critical for the practice of the invention, is not provided, established, designated or specified in any form, but only mentioned in the preamble of the claim. (At this point it is noted that as to limitations recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) of performing some or all of the recited steps is given no patentable weight unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble.)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 includes a following paragraph: "selecting said primary goal of said enterprise planning model, said primary goal being *represented* by a primary objective function, said primary objective function depending upon a set of operational variables", which is confusing. It is not clear when the *representation* of said primary goal by the primary objective function actually occurred, *before* the selection of said primary goal, or *after*. If *before*, then the selection step has to recite: "selecting a primary objective function". If *after*, then it raises 35 U.S.C. 112 (1) issue as missing an essential method step.

Furthermore, the use of the term *depending* in the phrase: "said primary objective function *depending* upon a set of operational variables" makes the claim vague and indefinite. It is not clear what type or correlation or relationship (if any) between said primary objective function and said set of operational variables is considered. Same reasoning is applied to the following recitations: "representing said strategic constraint by a constraint function, said constraint function *depending* upon a subset of said operational variables".


Claim 1 further recites: "constructing an effective objective function by combining said primary objective function and said constraint function", which is confusing. It is not clear what does the term *combining* actually contemplate. Said recitation can be understood as simply providing or superimposing on a graph the numerical or graphical representations of both function to determine a range of values of interest; or it can be understood as substituting values in one function with mathematical representations of said values determined by other function; or it can be understood as generating a next-order model (function). Same reasoning is applied to the following recitation in the claim 1: "*optimizing* said effective objective function over a range of weighting operational decisions for said factors for said constraint function to *obtain operational variables*".

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IB  
6/12/2006



IGOR N. BORISSOV  
PRIMARY EXAMINER